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COLD STORAGE.

TUESDAY, MARCH 30, 1920.

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D. C.

The committee met in the committee room, Senate Office Building, at 10.30 o'clock a. m., Senator Asle J. Gronna presiding.

Present: Senators Gronna (chairman), Wadsworth, McNary, Gore, and Smith of South Carolina.

Present also: Senator Frelinghuysen and Representative Hutchinson.

The committee then proceeded to the consideration of S. 3868 and H. R. 9521, bills to prevent hoarding and deterioration of, and deception with respect to, cold storage foods; to regulate shipments of cold storage foods in interstate and foreign commerce, and for other purposes.

(The bill S. 3868 is here printed in full as follows:)

A BILL To prevent hoarding and deterioration of, and deception with respect to, cold-storage foods; to regulate shipments of cold-storage foods in interstate and foreign commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "United States cold-storage act."

SEC. 2. That wherever used in this act (a) the word "person" means an individual, a partnership, a corporation, or two or more individuals having a joint or common interest; (b) the word "commerce" means commerce between any State and any place outside thereof or between points in the same State but through any place outside thereof, or between the District of Columbia and any place outside thereof, or within the District of Columbia; (c) the term "cold storage" means the storage or keeping of any article of food at or below the temperature of forty-five degrees above zero (Fahrenheit) in a cold-storage warehouse, but does not include chilling or precooling therein for not more than thirty days for manufacture or transportation; (d) the term "cold-storage warehouse" means any place in which the temperature is artificially cooled to or artificially maintained at or below forty-five degrees above zero (Fahrenheit), but does not include a car, vessel, or other vehicle of transportation used as such, or a place used solely for chilling or precooling for manufacture or transportation, or a place used exclusively for storage of any article for the sole use of the occupant, owner, or maintainer thereof (1) for consumption by himself or his family or guests, or (2) in his business of serving meals, or (3) in connection with his retail business only, in which case this exception shall be limited to articles of food stored for not more than thirty days; (e) the term "article of food" means fresh meat, including all fresh edible portions of food animals, fresh fish, fresh poultry drawn or undrawn, fresh game, eggs in shell or frozen, butter, butter substitutes, fresh fruits, and fresh vegetables, but does not include any such article not intended or designed for food purposes which is plainly and conspicuously marked in such manner as to show the fact in accordance with regulations under this act; and (f) the word "mark" includes stamp, brand, tag, and label, and the word "marked" includes stamped, branded, tagged, and labeled. When construing or enforcing the provisions of this act or any regulation thereunder, the act, omission, or failure of any person acting for or employed by any other person, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such other person as well as of the person acting for or employed by him.

SEC. 3. That it shall be unlawful for any person to ship, deliver for shipment, or sell, in commerce, any article of food that is or has been in cold storage, or to hold in cold storage in commerce any article of food, or, having received in commerce, to sell in the original, unbroken package any article of food that is or has been in cold storage, unless such article of food or the container thereof shall be plainly and conspicuously marked, in accordance with this act and the regulations thereunder, in such manner as to show (a) "cold storage," except that these words may be removed or omitted as the case may be in the event that before the expiration of thirty days following the date when such article of food was first placed in cold storage it is sold or delivered to the consumer thereof, (b) all the dates when put in and when taken out of cold storage, except that if the Secretary of Agriculture shall find it to be commercially impracticable to mark any article of food or the container thereof with the exact date, the day, but not the month or year, may be omitted, in which case the date when the article of food was first placed in cold storage shall for the purposes of this act be deemed the first day of the month, and (c) the names and locations of all the cold storage warehouses in which it was stored, or suitable distinguishing designations thereof approved by the Secretary of Agriculture for the purpose. If any such article of food be mingled with any other article of food of the same kind placed in cold storage on a different date so that the identity of each is not separately maintained, the dates for the purposes of subdivision (b) of this section shall be those of the article of food so mingled which was first placed in cold storage. No person shall divide, or place in a container, or transfer to a different container, any article of food in commerce which is or has been in cold storage unless the portions of such article of food, or such container in which it is placed or to which it is transferred, shall be marked in accordance with this act.

SEC. 4. That if the Secretary of Agriculture shall find that the proper and customary manner of handling any article of food is such that it is commercially impracticable to mark the same or the container thereof in accordance with this act, the person otherwise required under this act to have the same so marked shall furnish or display, as the Secretary of Agriculture may require, to the receiver of such article of food a written statement, or an invoice or bill of lading or other shipping document, which shall describe such article of food, shall correctly state the facts otherwise required by this act to be marked, in the manner prescribed in the regulations under this act, and shall be preserved and be subject to examination by an officer, employee, or agent duly authorized under this act for such reasonable length of time as the Secretary of Agriculture shall deem necessary for the purposes of this act; except that, in the case, under this section, of a sale at retail to the consumer, the facts required by subdivisions (b) and (c) of section 3 may be omitted unless otherwise requested by such consumer.

SEC. 5. That, except as otherwise permitted by this act, it shall be unlawful for any person (a) to alter, mutilate, destroy, obscure, obliterate, or remove any mark required by this act to be placed on any article of food or the container thereof while it is in commerce or, having been transported in commerce, remains unloaded, unsold, or in the original, unbroken package, or (b) to alter, mutilate, destroy, obscure, or obliterate any statement, invoice, or document or portion thereof, required to be furnished or displayed, during the time the same is required to be preserved under section 4 of this act.

SEC. 6. That it shall be unlawful for any person to ship, deliver for shipment, or sell, in commerce, any article of food that is or has been in cold storage, or to hold in cold storage in commerce any article of food, or having received in commerce, to sell in the original, unbroken package any article of food that is or has been in cold storage, after the expiration of twelve months following the date when such article of food was first placed in cold storage.

SEC. 7. That the provisions of sections 3, 4, 5, or 6 of this act shall not apply to any article of food shipped or sold or delivered for shipment to any foreign country, if in respect to the requirements of such section the article of food complies with the specifications and directions of the purchaser or consignee in such foreign country and be not in contravention of the laws of such country, but if said article of food be not actually exported this section shall not exempt such article of food from the operation of said sections.

SEC. 8. That in order to carry out the provisions of this act the Secretary of Agriculture or any officer, employee, or agent specifically authorized by him in writing for the purpose may, on any business day during the usual hours of business, enter any warehouse which receives, or from which is shipped or delivered, or any car, vessel, or other vehicle which transports, any article of food in commerce, and may inspect such warehouse or car, vessel, or other vehicle and the contents thereof, and any books, papers, letters, or documents relating thereto.

SEC. 9. That in order to carry out the provisions of this act and to provide information for the Congress, every warehouseman and every person transporting foodstuffs in commerce in a car, vessel, or other vehicle shall keep such records and accounts

and make such reports, in such manner or form, verified under oath or otherwise, and at such times, as the Secretary of Agriculture may require, as to the amounts, kinds, and ownership of any foodstuffs received, held, transported, or delivered by such warehouseman or other person, loans made by such warehouseman upon the security of such foodstuffs, charges made by such warehouseman for storage and other services rendered by him, and the size or capacity of his warehouse. Any information obtained by the Secretary of Agriculture under this act shall be available for the use of either House of Congress, and the Secretary of Agriculture shall cause such information as may be of public interest to be published from time to time. No person shall willfully (a) fail or refuse to make full and true entries or make any false entry in the accounts or records of his business required to be kept pursuant to this section, or (b) alter, mutilate, conceal, or destroy any such account or record, or (c) make any report required under this section which is false or fraudulent in any material particular, or (d) fail or refuse to make any report required under this section.

SEC. 10. That no person shall willfully hinder, obstruct, or resist the Secretary of Agriculture or any duly authorized officer, employee, or agent, in the performance of his duties under this act.

SEC. 11. (a) That whenever in the case of any article of food being offered for importation the Secretary of Agriculture has reason to believe that any provision of this act is being violated with respect to such article of food, he shall give due notice and opportunity for hearing thereon to the owner or consignee, and certify such fact to the Secretary of the Treasury, who shall thereupon (1) refuse admission and delivery to the consignee of such article of food, or (2) deliver such article of food to the consignee pending examination, hearing, and decision in the matter on the execution of a penal bond to the amount of the full invoice value of such article of food, together with the duty thereon, if any, and to the effect that on refusal to return such article of food for any cause to the Secretary of the Treasury when demanded, for the purpose of excluding it from the country or for any other purpose, the consignee shall forfeit the full amount of the bond.

(b) If, after proceeding in accordance with subdivision (a) of this section, the Secretary of Agriculture is satisfied that any provision of this act is being violated with respect to such article of food, he shall certify the fact to the Secretary of the Treasury, who shall thereupon notify the owner or consignee and cause the sale or other disposition of such article of food refused admission and delivery or entered under bond, unless it is exported by the owner or consignee within three months from the date of such notice, under such regulations as the Secretary of the Treasury may prescribe. All charges for storage, cartage, or labor on any such article of food which is refused admission or delivery or is entered upon bond shall be paid by the owner or consignee.

SEC. 12. That the Secretary of Agriculture is authorized to designate in writing specifically officers, employees, and agents of the Department of Agriculture to administer oaths for the purpose of this act. All such officers, employees, and agents are authorized and empowered to administer to or take from any person an oath, affirmation, or affidavit for the purposes of this act, or for use in prosecutions or proceedings thereunder. Any such oath, affirmation, or affidavit, authenticated by the official seal of the Department of Agriculture, shall, when offered for use in any proceeding under this act or in any court of the United States, have like force and effect as if administered or taken by or before the clerk of such court, without further proof of the identity or authority of such officer, employee, or agent. No such officer, employee, or agent shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or affidavit under the authority conferred by this act.

SEC. 13. That any person who violates any provision of sections 3, 4, 5, 6, 9, 10, or 12 of this act shall upon conviction thereof be punished by a fine not exceeding \$1,000 or imprisonment not more than one year, or both. After judgment of any court with respect to any violation of this act the Secretary of Agriculture may give notice thereof by publication in such manner as he by regulation may prescribe. A person shall not be prosecuted for any violation of sections 3, 4, or 6, resulting from the act, omission, or failure of any person not acting for or employed by him, prior to the time when the article of food involved came into his possession or control, if he shall show that such violation was not knowingly committed by him and also shall establish a written guaranty signed by the person, who shall be a resident of the United States, from whom he obtained the possession or control of such article of food, to the effect that such article of food had not been in cold storage or that, if it had been in cold storage and if apparently marked or represented in accordance with sections 3 or 4 of this act, the marks or representation were true. Said guaranty shall contain the address of the person required to sign it and such person shall be amenable to the prosecution, fine, penalty, or imprisonment which would otherwise attach to the person to whom he delivered the possession or control of the article of food.

Sec. 14. That for the enforcement of this act the sum of \$200,000 is hereby appropriated, to be available until expended, out of any moneys in the Treasury not otherwise appropriated, and the Secretary of Agriculture (a) is authorized to prescribe and promulgate such regulations as may be necessary; (b) may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and (c) shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this act in the District of Columbia and elsewhere.

Sec. 15. That no provision of this act shall be deemed to repeal or limit the operation of any provision of any other act of Congress, unless directly in conflict therewith.

Sec. 16. That if any provision of this act or the application of such provision to certain circumstances be held unconstitutional, the remainder of the act and the application of such provision to circumstances other than those as to which it is held unconstitutional shall not be affected thereby.

Sec. 17. That this act shall take effect and be in force from and after its passage; but no penalty, fine, forfeiture, or imprisonment shall be enforced for any violation occurring within ninety days after its passage.

STATEMENT OF MR. W. C. KIRK, REPRESENTING ARMOUR & CO., CHICAGO, ILL.

Mr. KIRK. I will state that in addition to representing Armour & Co. I was also asked by the officers of the Institute of American Meat Packers to say that my views in reference to this bill are likewise the views of the institute. They have received expressions from most of their members and have had some meetings in regard to this bill and other bills which are pending here, and our views are practically in harmony all the way through.

The CHAIRMAN. You say "this bill"; which bill do you refer to? There are many bills here.

Mr. KIRK. I am referring to S. 3868, the Gronna bill.

The CHAIRMAN. And then, of course, we are also considering the Hutchinson bill.

Senator FRELINGHUYSEN. And the Frelinghuysen bill, which is simply a copy of the Hutchinson bill, introduced in the Senate.

The CHAIRMAN. H. R. 9521 is the Hutchinson bill.

Mr. KIRK. The Institute of American Meat Packers is an association which includes in its membership practically all of the packers, both small and large, throughout the country. It has something like 200 members.

I would like to state further that I believe there has been some feeling among the Senators and Congressmen that perhaps the packers oppose cold-storage legislation generally. That has not been the case. The packers have never opposed a practicable and workable cold-storage bill. I can illustrate that, perhaps, by saying that in 1914 a number of the State food commissioners and some Bureau of Chemistry representatives met and framed what they termed a model cold-storage law, or uniform cold-storage law, which was sought to be passed in a number of the States; and the packers, so far as I know—speaking at least for Armour & Co., and I think I know pretty well the attitude of the other packers on this subject—have always been in favor of that bill. And in 1915, when the uniform-laws committee of the American Bar Association indorsed the bill and recommended it for passage in the various States the packers were very much in sympathy with that indorsement. They

thought it was a good, workable bill, and it has proved to be so in some 18 or 20 of the States which now have it in its essential terms. Not all of the State laws have followed the uniform cold-storage bill word for word, by any means, but its essential principles are in the laws of some 20 States at the present time.

Senator FRELINGHUYSEN. May I ask you a question there, Mr. Kirk? How does the bill introduced by Congressman Hutchinson and myself compare with the uniform law?

Mr. KIRK. Well, it differs very materially.

Senator FRELINGHUYSEN. I suppose as you go on you will explain in what respect it differs?

Mr. KIRK. I think I will, Senator; yes.

I will direct my remarks chiefly to Senate bill 3868, on which I have prepared myself more than on the others; although some time back we considered quite carefully H. R. 9521, which was then pending before the House committee.

I might say that we consider S. 3868 one of the best bills which have been introduced in Congress so far. I think it is the most workable bill, and the amendments that I am going to propose are minor in character. The bill, as a whole, is, we believe, a pretty good bill, and we are not opposing it, nor will we oppose it further than to suggest these amendments, which I think you will agree with me are logical and proper amendments to be made.

The CHAIRMAN. Will it disturb you, Mr. Kirk, if I ask you a question there?

Mr. KIRK. No, sir.

The CHAIRMAN. As I understand you, the packers are rather in favor of S. 3868. Is that because the provisions of Senate bill 3868 are not so drastic? Or, in other words, are the provisions milder as compared with the other bill? What is the reason that you prefer S. 3868 to H. R. 9521?

Mr. KIRK. Well, we think it is a practicable bill.

The CHAIRMAN. That is one of the matters I would like to have you touch upon briefly. Because, just speaking for myself, I would not waste the time of the Senate to pass a bill unless it would accomplish something, and if S. 3868 does not do that and if the House bill does provide restrictions which are necessary and workable, then of course we ought to pass the House bill.

Mr. KIRK. I will say this, Senator Gronna. We feel that S. 3868 is more nearly in harmony with laws of the different States at the present time than any other bill that has been introduced in Congress, and we believe, too, that it covers the ground very fully and is sufficient to protect the people in the purchase of cold storage foods, which, of course, is the ultimate purpose of any cold storage law, and at the same time is practicable from the standpoint of those who are directly concerned with such legislation.

You all understand, of course, that the packers are more directly concerned in cold storage legislation than any other class of people, for the reason that their products are handled in refrigeration all the time. From the time the animals are slaughtered until they are sold by the butcher over his block meat products are in refrigeration.

We consider that there are about three essential elements in cold-storage legislation: One, and perhaps the most important, is the time limit within which goods may be carried; second, the marking

provisions, requiring the goods to be marked; and third, the provision that reports must be made as to the amounts of goods held in cold storage, and so on.

Now, I am going to take up Senate bill 3868 and suggest the amendments that I have and the reasons therefor, from which I think you will get our ideas pretty well.

I am going to suggest that section 2, subdivision (c), page 2, line 8, be amended by inserting after the word "manufacture" a comma and the word "sale."

As it reads now there is an exemption as to goods carried in refrigeration, as to precooling or chilling for not more than 30 days after manufacture or transportation.

I am asking that the word "sale" be inserted there for this reason: As I just stated, all meat products are carried under refrigeration from the time the animal is killed until the meat is finally sold, and the branches that are maintained by the packers throughout the country are refrigerated sales rooms. They come within the description of a cold-storage warehouse in that they are refrigerated rooms and temperatures of 45 degrees and below are carried. All of the meats are going into those rooms and going out all the time, day after day. Fresh meats are seldom carried in a branch house more than a week or 10 days at the most. That is the ordinary course of marketing, and we think it would clear up the purpose of the bill in that regard to have the word "sale" in it.

The CHAIRMAN. Of course, if we insert the amendment you propose, that might give additional time, might it not?

Senator WADSWORTH. Thirty days would still be the limit.

Mr. KIRK. Thirty days would be the limit. The idea is this: The animals are slaughtered in, say, Chicago. They are put in cooling rooms immediately after slaughter and remain there for perhaps 48 hours, until the animal heat is all out of the carcasses. Then they are cut up, in refrigerating rooms still, and they are held under refrigeration until they are shipped. They may be shipped from Chicago, we will say, to Fort Wayne, Ind., which would be an interstate shipment. There they would go into the branch house and be held in a refrigerated sales room pending sale.

You may not understand just how the branch house worked. The selling is done right in those coolers; the customers come right in there and make their selections right in those refrigerated rooms. Now, we think there should be an exemption for 30 days, pending sale, as well as manufacture or transportation. It is a part of the marketing, and we would like to have the bill clear as to that.

Representative HUTCHINSON. But you might keep it in there for a year?

Mr. KIRK. And we would treat it as such.

Representative HUTCHINSON. But you might keep it there for a year.

Mr. KIRK. Oh, no; it is 30 days—"for not more than 30 days for manufacture, sale, or transportation."

Representative HUTCHINSON. It is not sold?

Mr. KIRK. Until it is sold.

Representative HUTCHINSON. For instance, you have so much pork. You put it into your cooling room and keep it. You do not have any demand for it. You could put it into your freezer and keep it there for a year without any record of it.

Mr. KIRK. Not as I construe this bill, Congressman.

Representative HUTCHINSON. That is what you have been doing, is it not?

Mr. KIRK. Well, we carry freezer stuff, of course. In the ordinary cooling rooms meat products are not carried more than 30 days.

Representative HUTCHINSON. Have not the packers millions of pounds of stuff that there is not any record of at all in these freezing rooms?

Mr. KIRK. I should say not. Take it in Illinois, for instance. We have a cold-storage law in Illinois and are required to make a cold-storage report to the State Department of Agriculture of Illinois every month.

Representative HUTCHINSON. How many States have cold-storage laws?

Mr. KIRK. Twenty-one at the present time.

Representative HUTCHINSON. How many are uniform?

Mr. KIRK. I should say that 15 of those follow the uniform law very closely. All of them except two or three are uniform as to time limits, and all of them with the possible exception of one are uniform as to the 30-day exemption.

Representative HUTCHINSON. How long have they been doing that? Since this law has been agitated?

Mr. KIRK. Well, our law in Illinois was passed in 1916, I think.

Representative HUTCHINSON. Does not almost every State exempt the particular product that they have the most of? For instance, the State of Delaware exempts apples. In the State of New York they exempt everything that is in a private cooling room or storage warehouse. There are not but two or three States that have the uniform law at all?

Mr. KIRK. Oh, yes; I should say that 14 or 15 of those States follow the uniform law very closely.

Representative HUTCHINSON. They are not alike; they all make exemptions.

Mr. KIRK. I am speaking about the uniform law. The uniform law has a 30-day exemption for products, to take off this very thing. That is, they allow the marketing for 30 days, and then when a product is carried under refrigeration for more than 30 days it immediately becomes a cold-storage product.

Representative HUTCHINSON. Well, if you exempt the chilling room, how does it become a cold-storage product under 30 days?

Mr. KIRK. Congressman, a chilling room in the packing house business means a room where products are simply carried for 24 or 48 hours or something of that sort. That is what we term a chilling room.

Representative HUTCHINSON. What do you term a freezing room?

Mr. KIRK. A freezer is where goods are put in and frozen and carried for a considerable period of time.

Representative HUTCHINSON. Well, take pork. You put pork in a freezing room, do you not?

Mr. KIRK. No, sir; not in a freezing room.

Representative HUTCHINSON. It does not go in there at all?

Mr. KIRK. Let me say this—and I was going to suggest that as one of the reasons for another amendment that I propose to ask. We do pickle under refrigeration, not at a freezing temperature

but at a temperature of between 34 and 35 or something like that. That is to keep the pickle sweet and keep it from becoming rancid. It makes the process of pickling uniform. That is not a freezing temperature by any means, and it is not what we call freezer storage.

Senator WADSWORTH. Let me ask you this. Would the insertion of that word "sale" after the word "manufacture" operate to extend the period of time?

Mr. KIRK. I do not think it would, Senator; not at all.

Senator WADSWORTH. I can not see myself that it would.

Mr. KIRK. As the bill stands, it is limited to manufacture or transportation. Of course transportation is an incident to sale, necessarily so, and where we have the transportation already completed—transportation in interstate commerce—then I say there should be 30 days exemption there for the marketing of that product before it becomes a cold-storage product. It is not regarded as a cold-storage product in the laws of these various States until after 30 days. There is some limit of time when an article is not a cold-storage product, and then there is a time when it passes and becomes a cold-storage product.

Senator McNARY. Ordinarily the meat that is placed in a cooling room for chilling purposes is left there for a few days before it reaches the consumer?

Mr. KIRK. Oh, yes.

Senator McNARY. That time is, on the average, very much less than 30 days, is it not?

Mr. KIRK. Yes.

Senator McNARY. Take this as an illustration: Your beef is killed, and then placed in a cooler and chilled in order to get rid of the animal heat. Then it is ready to be sold to the butcher, is it not?

Mr. KIRK. Yes.

Senator McNARY. Take Chicago, for instance, and the big packers. What is the usual difference between the time that the meat is pre-cooled and when it reaches the retailer?

Mr. KIRK. We might take a case like this: Suppose we are selling beef in Chicago to-day. Those carcasses after being killed are run into these chilling rooms, and they stay there approximately 48 hours, until, as I say, the animal heat is all out and the carcass becomes thoroughly stiffened. Then they go from these chilling rooms into the cutting rooms and there are cut up. They are held in stock there, maybe one day, two days, three days—it depends upon the demand for beef—and then they are shipped.

The CHAIRMAN. Can you give us the maximum time they are held?

Mr. KIRK. In the cutting rooms?

The CHAIRMAN. Yes.

Mr. KIRK. In the cutting rooms they are not held more than one day, but they may be held in the stock rooms, the packing-house stock rooms, for two or three days.

Senator WADSWORTH. They are refrigerated?

Mr. KIRK. Oh, yes; they are all refrigerated. The beef is carried under refrigeration from the time the animal is killed until the meat is sold.

Senator McNARY. After it has been in the storage room for, say, four days, then it goes out to the retail butcher in Chicago, or for transportation to other States?

Mr. KIRK. We ship, not to the retail butcher in Chicago, but all over the United States.

Senator McNARY. I understand that; but allowing you four days after it is placed in storage, does it go almost immediately to the local butchers in Chicago and in transportation to other States in the country?

Mr. KIRK. It does not go in transportation after it goes to the local butchers.

Senator GORE. Not that particular meat.

Mr. KIRK. I see what you mean.

Senator McNARY. Does it almost immediately go into transportation?

Mr. KIRK. Oh, certainly.

Senator McNARY. Then after arriving in Washington, say, it goes to the local butchers in this city?

Mr. KIRK. That is right.

Senator McNARY. Then I want to know this: The average animal slaughtered would reach the consumer before the expiration of the 30 days?

Mr. KIRK. Oh, yes.

Senator McNARY. What percentage of the animals would reach the consumer within the 30 days; would it be 75 or 80 per cent?

Mr. KIRK. Approximately all of the beef. I would say that all of the beef that is sold as fresh beef reaches the retail butcher within 30 days.

Senator FRELINGHUYSEN. I do not want to take too much time, but I do want to understand the idea that this gentleman has. I understand that this section is intended to define what cold storage is. Your idea is that in defining it it should include not only products for manufacture and transportation but also products for sale. That is your object, is it not?

Mr. KIRK. That is my object; yes, sir.

Senator FRELINGHUYSEN. You feel that the section is defective without the word "sale" in it?

Mr. KIRK. It is not clear, at least.

Senator FRELINGHUYSEN. In view of the fact that this is a definition of cold storage, would it not create an exemption from the prohibition in section 3, which says that it shall be unlawful for any person to ship, deliver for shipment, or sell, in commerce, any article of food that is or has been in cold storage without having been marked, etc.?

This would read simply:

But does not include chilling or precooling therein for not more than 30 days for manufacture, sale, or transportation.

Would not that exempt from marking original unbroken packages of products that were in that cold-storage warehouse for sale?

Mr. KIRK. My idea, Senator, is just this—

Senator FRELINGHUYSEN (interposing). That is what is meant, is it?

Mr. KIRK. If I understand your question correctly, my idea is this, that until an article has been under refrigeration for 30 days it is not to be considered a cold-storage product. If that were not so, then we would have no fresh beef; it would all be cold-storage beef. There would not be a bit of fresh beef on the market.

That is not what the people regard as cold-storage beef. That is not what you gentlemen regard as cold-storage beef. What you consider cold-storage beef is what has been in cold storage for a considerable period of time—three or four months we will say.

Senator GORE. Like some of these chickens, turkeys, and eggs that we get hold of?

Mr. KIRK. Yes.

Senator FRELINGHUYSEN. That would, it is true, prohibit them from marking products held in there for sale?

Mr. KIRK. If they are held for not more than 30 days; yes, sir.

Senator McNARY. I will say to the Senator from New Jersey that article 3, to which you make reference, in line 22, exempts all food products in cold storage from the operation of this bill under 30 days. It should be given the same construction as section 2, line 8, where the word "sale" is inserted, as I view it.

Senator SMITH of South Carolina. In other words, if from the time of slaughter until the time of transportation, sale, or manufacture the stuff has not been in this establishment more than 30 days it is not cold storage?

Senator McNARY. That is all. That exemption is made by section 2 and made by section 3.

Senator GORE. That also applies to fruits and vegetables, Senator?

Senator McNARY. Yes. We were only discussing meats at this time. There is a disposition on the part of some persons to take fruits and vegetables out of this. But the word "sale," as I see it, does not broaden the meaning of the law.

Mr. KIRK. I would like to read section 1 of the uniform cold-storage law, which explains very clearly, I think, just what I had in mind here. Section 1 reads:

For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of 45 degrees Fahrenheit in a cold-storage warehouse; "cold-storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of 45 degrees Fahrenheit in which articles of food are placed and held for 30 days or more.

Of course, the language of S. 3868 is somewhat different from this uniform law, but it means substantially the same thing.

Senator SMITH of South Carolina. I would like to ask you this question: When you ship the stuff out what process is used to determine whether the meat has been in this place more or less than 30 days? For instance, I go into your room to make a purchase, and you make a shipment. How could it be ascertained that it had only been in there less than 30 days from the date of slaughter to the date of manufacture, sale, or shipment?

Mr. KIRK. I do not know that the purchaser would have any way of determining that fact absolutely, except to take the seller's word for it. That is about all he could do in any event.

Senator GORE. There would have to be some way of checking it up, or the law would be ineffective.

Representative HUTCHINSON. That is why there is a provision in here for marking it.

Mr. KIRK. I know, but I do not believe you gentlemen would want the packers to mark every piece of meat they handle with the date of slaughter.

Representative HUTCHINSON. Do you not do it now for the purpose of inspection?

Mr. KIRK. Oh, yes; the United States inspector goes through and puts on the stamp "United States inspected and passed."

Senator SMITH of South Carolina. And then after he inspects it to see whether or not the animal is diseased, and he stamps it, there is no way of ascertaining whether it has been in there more than 30 days, except the packers' word?

Mr. KIRK. As a practical matter fresh meat products would not be carried in ordinary brach house refrigeration for more than 30 days. They would not do it. You see, that temperature is maintained low enough—if you keep meat products any great length of time they must be kept in freezer storage; that is, frozen solid.

I would like to ask that the same amendment be made in line 14 on page 2. In other words, insert after the word "manufacture" in line 14, page 2, a comma and the word "sale." That is for the same reasons.

I would like to suggest that section 2 (e), page 2, line 22, be amended by inserting after the word "animals" a phrase something like this, in parentheses: "Except such as are in process of preparation, manufacture, or cure."

Senator WADSWORTH. What is the reason for that?

Mr. KIRK. The reason for that is this: "Article of food" as it stands means fresh meat, including all fresh edible portions of food animals. I presume that that would exempt cured meats in any event, but I make this suggestion simply to make it entirely clear, because there might be some question as to when a meat product ceases to be a fresh-meat product and becomes a cured-meat product. I will illustrate that in this way. In the manufacture or preparation of hams and bacon we start, of course, with the fresh ham or fresh side of bacon, right fresh out of the animal. That is put in pickle—a solution of sugar, salt, saltpeter, and such things as that. That is substantially the pickling process.

The CHAIRMAN. Of course, that would no longer be considered fresh meat, would it?

Mr. KIRK. I do not believe it would, Senator, although at the minute you put it in pickle it is still fresh, and it continues fresh for quite a while. But those pickling vats or tubs are carried under refrigeration, and the hams are carried from 30 to 90 days in that pickle, with a change from time to time—that is, there is a fresh pickle put in—until that ham or side of bacon is entirely cured.

Senator GORE. At about what temperature would you have that?

Mr. KIRK. That is around 34 or 36. It remains in there until that ham or that side of bacon is entirely pickled. Then it is taken out of that pickle and put in smoke for from 24 to 48 hours. Then, of course, it is a cured meat product.

Senator GORE. You smoke it as soon as it is taken out of the pickle?

Mr. KIRK. Yes; as soon as it is drained. Now, that might apply to dry salt meat. We put our meat in salt, you see, under refrigeration at a temperature of from 34 to 36—

Senator GORE (interposing). I think we all see what you are driving at. There is a sort of twilight zone?

Mr. KIRK. Yes; and this makes the act entirely clear. Otherwise there might be some question come up about it. I would like to have those things made perfectly clear, because as you know some inspectors raise questions about this, that, and the other, and you never can

have a law too clear to keep out of controversies, and I think that is what the law intends, without a doubt, and it is not a very serious amendment anyway, in my opinion.

Representative HUTCHINSON. Going back to that question again, how does that apply to the millions of pounds of hams and bacon that are frozen without being cured, that you are waiting for a demand for?

Mr. KIRK. Well, I do not think we have billions of pounds by any means.

Representative HUTCHINSON. It has been testified before us that you have.

Mr. KIRK. Billions of pounds?

Representative HUTCHINSON. Millions of pounds—that you carry them all the time.

Mr. KIRK. No. I would not say we carry them all the time. There are times, of course, when the run of hogs is very heavy and the slaughter is greater than the demand for cured hams and bacon. They take the hams and put them in the freezer and freeze them until they get to a point where they can handle them through their pickling departments. However, I would say that under this law those fresh hams carried in cold storage would, of course, have to be treated as cold-storage products.

Representative HUTCHINSON. Under your amendment?

Mr. KIRK. Yes, sir.

Representative HUTCHINSON. There is no additional work required in your packing house to keep records of that, is there? You keep a record of every ham and piece of bacon and everything like that? You do keep them?

Mr. KIRK. Not a record of individual hams; they keep a record of quantities.

Representative HUTCHINSON. In other words, a man could not go into your freezing room and take out a piece of fresh bacon before it is cured without your knowing it?

Mr. KIRK. I do not think so. Of course, we have thefts.

Representative HUTCHINSON. Why do you object to having a record of that?

Mr. KIRK. I am not objecting.

Representative HUTCHINSON. This bill is not effective at all in the way of cold storage; the object of this bill is to get a record of the cold storage meats that we have in this country.

Mr. KIRK. I am not objecting to that, Congressman, my objection is this: Assume, for instance, that we were to put fresh hams and fresh sides of bacon in the freezer and freeze them and carry them more than 30 days before they were pickled. I would say they would be treated as cold storage products while they were in the freezer, but when we take them out of that freezer and run through them the pickling process and smoking process there is no reason why we should brand them cold storage and sell them as cold storage products. A smoked ham or smoked side of bacon is not regarded as a cold storage product.

Representative HUTCHINSON. You do not have to brand them that way. The bill H. R. 9521 makes provision for that.

Now, I would like to ask you one other question. When do you claim that a ham or side of bacon goes out of interstate commerce?

Mr. KIRK. Well, I assume it would leave interstate commerce when the package in which it is shipped is broken.

Representative HUTCHINSON. Then we could not pass any law to regulate it at all.

Mr. KIRK. This law regulates the transportation, as I see it.

Representative HUTCHINSON. The very minute it is sold to the retailer for retailing it goes out of interstate commerce, and you can not put "cold storage" or anything else on it.

Mr. KIRK. I know, but I am not concerned, with respect to this bill, when it reaches that point; I am concerned when it is shipped out of our packing centers.

Representative HUTCHINSON. You object then to the words "cold storage" being put on hams? Is that it?

Mr. KIRK. A smoked ham; yes.

Representative HUTCHINSON. You do not have to do it under H. R. 9521, and I do not think you have to do it under this bill.

Mr. KIRK. Well, that is just the question. I hardly believe myself that that language is capable of that construction. I am just suggesting this to make it entirely clear.

Senator McNARY. You think it applies to hams placed in cold storage fresh to be cured later?

Mr. KIRK. While we are holding them in the freezer they undoubtedly would be cold-storage products.

Senator McNARY. Yes; but that which goes into the mixture of sugar, salt, saltpeter, and water does not, you think, come under the definition of fresh meat?

Mr. KIRK. No; it is in the process of cure then.

Senator McNARY. In the proposed act you want that definition clarified so that there would be no question about it?

Mr. KIRK. That is right.

Senator FRELINGHUYSEN. This exemption would be very sweeping, would it not?—

Including all fresh edible portions of food animals, except such as are in process of preparation, manufacture, or curing.

That makes it very sweeping. Does that wording limit it to hams and bacon? You smoke liver, do you not?

Mr. KIRK. I think they do smoke some liver; yes, sir.

The CHAIRMAN. We will consider that. Speaking, of course, as only one member of the committee, I should say offhand that it would be impossible to accept that provision, but we will consider it. We are not going to sit here for days and weeks and write a law unless we can accomplish something. Whether it puts the men engaged in this great industry to some inconvenience or not is not the question. The important thing is to protect the public. Take, for instance, the ptomaine poisoning of hundreds of people throughout the United States by ripe olives.

While I do not want to go into that question here at all, still all these goods, whether in the form of smoked meats or otherwise, must be kept track of. If we can not pass a bill which provides for that, we had better not pass anything at all. Just speaking for myself, I do not think it is necessary to spend any more time on that. So far as I am concerned I should say I would be absolutely opposed to any such provision as you propose here, because you are eliminating everything from this bill.

Mr. KIRK. Not at all, Senator.

The CHAIRMAN. I know; but as the Senator from New Jersey said, it is so sweeping. Of course, we are glad to have your recommendation. Let us proceed now.

Mr. KIRK. I do not think it is sweeping in that sense, because I think that is the construction in any event.

My next suggestion is to amend section 3, line 25, running over to line 1 on page 4, by striking out the words "sold or delivered to the consumer thereof," and inserting in lieu thereof "removed therefrom for the purpose of sale."

The CHAIRMAN. Practically the same thing was suggested by Mr. Horne. He suggested "removed therefrom for the purpose of being sold."

Mr. KIRK. That is substantially the same thing. Of course the packer can not control the sale to the consumer, by any means.

The CHAIRMAN. Your suggestion practically harmonizes with that of Mr. Horne. What is your next suggestion?

Mr. KIRK. I propose to amend section 9, page 7, line 9, by striking out the word "foodstuffs" and inserting in lieu thereof "articles of food as herein defined which have been held in cold storage." The word "foodstuffs" as I read that section, would apply to all articles of food of every kind and description. In other words, this is the reporting provision of the cold-storage law, and I think it was intended, undoubtedly—

Senator GORE (interposing). The phrase you suggest is just as wide as the law?

Mr. KIRK. Oh, yes; my phrase is just as wide as the law.

Senator GORE. And the other is wider?

Mr. KIRK. And the other is much wider.

Senator McNARY. At this point I want to read a paragraph from a letter I received from the International Poultry Jobbers' Association and the National League of Commission Merchants, signed by Mr. J. C. Folger, of Rochester, N. Y., on this very point. He says:

Under this provision practically every farmer in the United States could be compelled, under penalty of fine or jail sentence, to report to the Secretary of Agriculture every shipment of wheat, corn, potatoes, apples, cabbage, rice, or other food products which he grew on his farm and shipped to market in interstate commerce. Intrastate shipments would be affected indirectly, since it would be difficult to state what part of the shipment might remain within the State. Such compulsion is totally unrelated to cold storage. It is unwarranted abuse of regulation. Would you as a farmer want to fill out a blank every time you made a shipment of foodstuffs?

Never, under war-time powers granted to the Food Administration, was such sweeping authority contemplated. To suggest that the powers granted to the Secretary be merely permissive is insufficient. To confer power is to contemplate its use.

Senator GORE. Yes; we have seen that.

Senator FRELINGHUYSEN. Does this rectify it, in your opinion, Senator McNary?

Senator McNARY. Yes; I am heartily in favor of that being in. It is only a provision by which statistics could be gathered, and I can see where the farmer would be annoyed to death in furnishing these statistics.

Senator WADSWORTH. It probably was the intent of the author of the bill.

Senator McNARY. I think so.

The CHAIRMAN. How would that read?

Mr. KIRK. My provision would make it read like this:

That in order to carry out the provisions of this act and to provide information for the Congress, every warehouseman and every person transporting articles of food as herein defined which has been held in cold storage in commerce in a car, vessel, etc.

Senator FRELINGHUYSEN. Should you not also change line 14?

Mr. KIRK. Yes; I have the same change to propose there, and also in line 17, where the word "foodstuffs" again occurs.

Senator GORE. That is to make it uniform?

Mr. KIRK. To make it uniform all through.

The CHAIRMAN. Very well; proceed.

Mr. KIRK. Those are all the amendments that I have to propose here.

I would like to have the committee consider those first two amendments that I suggested quite carefully, because I feel that they do not limit the provisions of the act in any way at all; they make the statute workable. They make it follow the uniform laws in nearly all the States that have passed cold-storage laws. They are as logical as can be, because there is a certain class of products which are regarded as cold storage when they are carried under refrigeration for a considerable period of time—

Senator GORE (interposing). Is there anything in this bill which provides that cold storage chickens and eggs shall be marked "poison" and sold only on the prescription of a doctor?

Mr. KIRK. I do not think it goes that far.

Senator GORE. If there is not, I want to put it in. I have a violent prejudice against those things.

Senator FRELINGHUYSEN. Do you do business in New Jersey?

Mr. KIRK. Oh, yes.

Senator FRELINGHUYSEN. This law very largely adopts the same principles as the New Jersey law?

Mr. KIRK. I have not the New Jersey law very clearly in mind.

Senator FRELINGHUYSEN. You stated that S. 3868 was more workable than H. R. 9521. I do not believe you clearly stated wherein it was more practicable.

Mr. KIRK. For instance, H. R. 9521, in section 2, subdivision (c), says, "The term 'cold-storage' means storage in a warehouse as defined herein." It makes no exemption 30 days at all, so that under that bill, as I say, every pound of meat that is sold by the packers would be cold-storage meat. There would not be any such thing as fresh meat.

Senator WADSWORTH. How is "warehouse" defined in that bill?

Mr. KIRK. In H. R. 9521 the term "warehouse" means—

any establishment or structure, or portion thereof, which is artificially cooled to or below the temperature of forty-five degrees above zero, Fahrenheit, except a refrigerator vehicle used as such, or an establishment or structure or portion thereof used exclusively for storage of any article for the sole use of the occupant, owner, or maintainer thereof.

Senator WADSWORTH. Then a country butcher who went out to a farmer and bought, we will say, a fat heifer and took it to his own slaughterhouse and slaughtered it and put it in his own cooler below 45° for three days, or two days, or any length of time, would be subject to the cold-storage act, on the ground that that carcass was a cold-storage product?

Mr. KIRK. He certainly would be handling cold-storage meat. He might not be subject to the terms of the act if he did not do an interstate business.

Senator FRELINGHUYSEN. Could he not be compelled to come under these restrictions?

Mr. KIRK. Not unless he kept it 30 days.

Representative HUTCHINSON. If he shipped it out of the State?

Senator WADSWORTH. On the basis of 30 days holding in cold storage. As I understand it, that bill would make it apply if he had it only one day.

Senator FRELINGHUYSEN. Mr. Hutchinson, you have no objection to the 30-day provision?

Representative HUTCHINSON. Not a bit.

Senator FRELINGHUYSEN. Your idea is that with the 30-day provision inserted these clauses will be perfected? That is why the bill S. 3868 is more practicable than H. R. 9521 as originally written?

Mr. KIRK. Absolutely.

Senator FRELINGHUYSEN. But I notice also that says "except in process of manufacture, preparation or curing."

Mr. KIRK. Yes. Now, let me read section 1 of your New Jersey bill:

For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of forty-five degrees Fahrenheit, in a cold-storage warehouse; "cold-storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of forty-five degrees Fahrenheit, in which articles of food are placed or held for thirty days or more; "articles of food" shall mean fresh meat and fresh-meat products, except in process of manufacture.

Your New Jersey law is just what I would like to see in this S. 3868.

I will also say, Senator Gronna, that the North Dakota cold-storage law is a very good law. I would like to see the provisions of your North Dakota law written into this bill.

Senator FRELINGHUYSEN. To get back to my point, the difference between H. R. 9521 and S. 3868 is in the 30 days' exemption?

Mr. KIRK. Thirty days' exemption as to meats carried under refrigeration.

Senator FRELINGHUYSEN. When that is done that perfects H. R. 9521, does it not?

Mr. KIRK. There are a number of other things.

Senator FRELINGHUYSEN. One is "in process of preparation, manufacture, or cure"? That has already been adopted.

Mr. KIRK. Yes.

Senator FRELINGHUYSEN. What else is there?

Mr. KIRK. Section 5 of H. R. 9521, referring to the mixing or mingling of food articles is, in my opinion, broad enough to cover almost anything that might contain an atom of cold-storage food.

Senator FRELINGHUYSEN. Well, you have perfected that by saying "and the resulting mixture is thereafter placed in cold storage"?

Mr. KIRK. Yes.

Senator FRELINGHUYSEN. That would make that satisfactory, would it not?

Mr. KIRK. Yes.

Senator McNARY. I think I offered an amendment covering that point, to correct that.

Senator FRELINGHUYSEN. And it should be dated the first day?

Representative HUTCHINSON. The 1st day of the month.

Senator FRELINGHUYSEN. What is the next difference? Well, in section 10, page 6, you perfect it by saying:

It shall be considered a violation of this act for any person to receive, etc.

Mr. KIRK. Yes. The reason for that change in subdivision (a) and subdivision (b) both was to require the Secretary of Agriculture or those acting for him to begin a prosecution if they thought there was a violation, instead of absolutely seizing the meat.

Senator FRELINGHUYSEN. In other words, those changes would perfect H. R. 9521 to your satisfaction, would they not?

Mr. KIRK. Yes—

Senator WADSWORTH (interposing). Does H. R. 9521 contain that drawn-poultry clause?

Mr. KIRK. Yes, I think so.

Senator FRELINGHUYSEN. You raise that objection to it, too, do you?

Mr. KIRK. Yes, I would raise that objection, too, to H. R. 9521.

Of course, H. R. 9521 had another objection that I thought was quite serious, and that was that the term "article of food" included every product of every kind, character, or description that would be placed in cold storage.

Senator FRELINGHUYSEN. The amendment suggested here, "except articles of food as herein defined which has been held in cold storage," would remedy that, would it not?

Mr. KIRK. That is, in S. 3868?

Senator FRELINGHUYSEN. Yes.

Mr. KIRK. Well, in S. 3868 the definition of article of food is limited more than in H. R. 9521.

Senator FRELINGHUYSEN. Then if the definition of food in S. 3868 were adopted in H. R. 9521 it would perfect H. R. 9521?

Mr. KIRK. It would that part of it, I think; yes.

Senator FRELINGHUYSEN. Mr. Chairman, I think that Congressman Hutchinson, if the gentlemen has finished, would like to state his views.

The CHAIRMAN. Is there anyone else who desires to be heard?

Mr. KIRK. I think that Mr. Gadsden over here, representing Swift & Co., has something he would like to say to you.

The CHAIRMAN. Very well. We will hear Mr. Gadsden now.

STATEMENT OF MR. THOMAS GADSDEN, REPRESENTING SWIFT & CO., CHICAGO, ILL.

Mr. GADSDEN. I have not much to say, gentlemen, except in reply to any questions you may ask me. I want to speak in favor of a cold-storage law and a uniform cold-storage law covering all States. I am not a lawyer; I am a warehouseman. Where we have various State laws, and States where there are no laws, we do not know where we are at regarding these marks. We want to insist that the marks be put on the packages so that we will know where we are at. If any stuff is shipped in from Kentucky, for instance, where there is no cold-storage law, there is no mark on the package. How can we tell whether it is 10 months or 12 months or 3 months old? There is no way of telling.

Senator McNARY. Are you referring now to what is known as the Gronna bill? Is that what you have before you?

Mr. GADSDEN. I was speaking in favor of a uniform cold-storage bill.

Senator McNARY. I know, but you have a bill before you.

Mr. GADSDEN. The Gronna bill; yes, sir.

I want to reiterate Mr. Kirk's suggestion with regard to the word "sale" being put in there, and also the exception as to products in process of manufacture and cure. That is highly essential, I believe. In the curing of this product some of it goes into the freezer and afterwards goes into cure, and some of it goes into cure direct from the cooling room or chilling room.

The CHAIRMAN. As a practical warehouseman, how much of the cured meats do you keep in cold storage?

Mr. GADSDEN. Cured meats?

The CHAIRMAN. Do you keep any of them in cold storage?

Mr. GADSDEN. The dry salt meats, Senator—that is in a temperature of 45° or a little under.

The CHAIRMAN. That would be cold storage?

Mr. GADSDEN. Yes, sir.

The CHAIRMAN. What percentage of the cured meats go into cold storage?

Mr. GADSDEN. All dry salt meats.

The CHAIRMAN. That would include hams and shoulders?

Mr. GADSDEN. Yes, sir.

The CHAIRMAN. And bacon?

Mr. GADSDEN. Yes, sir.

The CHAIRMAN. Now, you want to eliminate all that? That is the purpose of this amendment?

Mr. GADSDEN. We want to eliminate them when they go into process of cure. When they go into the process of cure they are put down either in pickle or in dry salt, and we believe that eliminates them from being called fresh.

Senator FRELINGHUYSEN. Do you represent Swift & Co.?

Mr. GADSDEN. Yes, sir.

Senator FRELINGHUYSEN. Do you do business in New Jersey?

Mr. GADSDEN. Yes, sir.

Senator FRELINGHUYSEN. Have you had any difficulty in transacting business under the cold-storage law in New Jersey?

Mr. GADSDEN. I have never heard of any difficulty there.

Senator FRELINGHUYSEN. You believe then that Federal supervision of warehouse and cold-storage products is necessary?

Mr. GADSDEN. I do.

Senator FRELINGHUYSEN. You do not believe that it would be an unwarranted interference with the business of meat packing and cold storage generally?

Mr. GADSDEN. No, sir; we are highly in favor of it.

Senator FRELINGHUYSEN. You think it is necessary?

Mr. GADSDEN. Yes, sir. I have seen abuses that I think this will correct.

The CHAIRMAN. Have you any objection to the requirements in Senate bill 3868 as to publicity, and also as to giving the names of the owners of the products?

Mr. GADSDEN. No, sir.

The CHAIRMAN. Mr. Horne raised an objection to that.

Mr. GADSDEN. Well, he raised it from the position of a public cold-storage man.

Senator FRELINGHUYSEN. The point you make is that regulation of the cold-storage business is necessary for the public health, and

there should be supervision in view of the fact that the packing-house business now is largely interstate?

Mr. GADSDEN. Yes, sir. The cold-storage business has been greatly maligned in the past, and unjustly so. I believe that with a uniform cold-storage law it will be recognized as a respectable business and not a crooked business. A great many people seem to think that we do not put a product into cold storage until it is just about ready to spoil, when it is exactly the contrary.

The CHAIRMAN. How do you understand the requirements of Senate bill 3868 as to publicity? Do you understand that it would require the big packers, who have their own warehouses, to publish statements just the same as the public warehousemen who do not own the products?

Mr. GADSDEN. Yes, sir; I see no objection to that.

The CHAIRMAN. I say, do you understand that it would include the packers who own the meats and who own the warehouses as well as those who are operating warehouses for the purpose of storing foodstuffs?

Mr. GADSDEN. I do not understand you to mean that we publish each individual warehouse. It is published as total holdings. We turn in our reports to the Secretary of Agriculture or to the State department of agriculture, and so on.

The CHAIRMAN. You do make reports now?

Mr. GADSDEN. Yes, sir; we do.

The CHAIRMAN. And you have no objection to that?

Mr. GADSDEN. No, sir; no objection.

There is something I wanted to bring up, and that is with regard to the multiplicity of reports. I believe there is some talk of requiring a report to be made to the Department of Agriculture, practically an inventory, four times a year. That is asking a great deal and it does not accomplish—

The CHAIRMAN (interposing). Ought it not be made oftener than that? Ought it not be made every month?

Mr. GADSDEN. It is practically an inventory, Senator. That would cost millions of dollars. You can imagine what that would cost if we made an inventory of all products in every branch house and plant the 1st of every month or every four months. We would have some 360 branch houses reporting in, and they would have to report in by wire, and by the time we got the wires we would find out they were wrong. There would be wires coming in galore, and we would have to have an enormous force to file those reports, and by the time the committee got the information it would be wrong.

The CHAIRMAN. You are speaking, of course, of present conditions. I do not know that I am going to be able to change anything while I am a member of this distinguished body, although I have made a feeble effort, but if I had the power there are a lot of things that I would change. The system is entirely wrong now with reference to a lot of these reports. So we will not assume that it is going to be the same in the future as it has been in the past.

What I want to ask about is this. Would it be impossible or would it involve too large an expense to require in this bill a full statement from all warehousemen and from all people engaged in handling foodstuffs of the kinds that we are dealing with here—a monthly statement or monthly report which would give us the information as to the amount on hand of all the various kinds, the time

that it has been kept in cold storage, and all that? That is what I would like to know of you, as a practical warehouseman.

Mr. GADSDEN. I would like to qualify that a little bit, Senator. A warehouseman is defined in the act?

The CHAIRMAN. Yes.

Mr. GADSDEN. That is, it would not involve a branch house or anything of that kind, except where that branch house was carrying stuff for longer than 30 days?

The CHAIRMAN. Yes.

Mr. GADSDEN. That would simplify it a great deal, if that provision "less than thirty days" were left in. It would not be such a hard report, but it would be rather an expensive report at that. It can be done, though.

The CHAIRMAN. It is a pretty expensive thing now, the way we conduct our business with reference to foodstuffs. You realize it is pretty expensive to the public now, do you not?

Mr. GADSDEN. Yes. With the multiplicity of reports that we are sending in here, there, and everywhere, to confine this and put in one report would simplify things a great deal.

Senator WADSWORTH. One of the great troubles about the food problem now is the tremendous cost of distribution. If we exact too many reports we increase the cost of distribution. It is going to be added onto the price of the article by somebody somewhere?

Mr. GADSDEN. We figure that this inventory four times a year would cost our company alone in the neighborhood of a million dollars.

The CHAIRMAN. That is, Swift & Co.?

Mr. GADSDEN. Yes, sir.

The CHAIRMAN. What proportion of all kinds of meat is handled by Swift & Co.? Can you remember that?

Mr. GADSDEN. Oh, I would say under 15 per cent.

Senator GORE. At what time of the year would you say that the stocks are heaviest in cold storage, and at what time are they the lightest?

Mr. GADSDEN. Right about now should be the heaviest time, Senator, and along toward early fall is the lightest.

Senator GORE. Well, if you are going to have two reports a year instead of four, they should hit the heaviest and the lightest?

Mr. GADSDEN. They should hit the heaviest and the lightest.

There is one matter in here that I should like to call your attention to. On page 10, section 13, line 23, part of the section reads as follows:

A person shall not be prosecuted for any violation of sections 3, 4, or 6, resulting from the act, omission, or failure of any person not acting for or employed by him, prior to the time when the article of food involved came into his possession or control, if he shall show that such violation was not knowingly committed by him.

I believe that is sufficient, without going on with establishing his innocence by written documents from the party he received the product from.

The CHAIRMAN. You agree with Mr. Horne with reference to that? You are familiar with Mr. Horne's statement?

Mr. GADSDEN. I have not read all of it, Senator.

The CHAIRMAN. Well, the committee will go into that. Is there anything further you wish to say?

Senator GORE. Just a minute. Does the law require that a man shall prove his innocence?

Mr. GADSDEN. I never heard of it.

Senator GORE. Does this propose to do that?

Mr. GADSDEN. Yes, sir.

The CHAIRMAN. This bill reads this way, following the language quoted by Mr. Gadsden:

and also shall establish a written guaranty signed by the person, who shall be a resident of the United States, from whom he obtained the possession or control of such article of food, etc.

That is the requirement that is in this bill.

Senator GORE. Mr. Horne objected to that, and I understand that is your objection?

Mr. GADSDEN. Yes, sir. I am a warehouseman, and it would be an awfully hard matter—

The CHAIRMAN (interposing). Well, it would be hard, but it would not be impossible, would it?

Mr. GADSDEN. It would not be impossible; no, sir, but there are two conditions there that you have got to comply with, according to this, and I think one is sufficient.

The CHAIRMAN. Is there anything further?

Mr. GADSDEN. I have nothing further, except to reiterate what Mr. Kirk has said.

The CHAIRMAN. You heard the suggestions made by Mr. Kirk. If the amendments proposed by Mr. Kirk should be incorporated in the House bill as it passed the House, would that bill then be satisfactory to you?

Mr. GADSDEN. Well, he dwelt, I believe, on the covering of all foods. House bill 9521, I believe, did not contain that provision—the removal from cold storage for the purpose of being sold.

Senator FRELINGHUYSEN. Well, if the changes suggested by Mr. Kirk are approved by the committee in H. R. 9521, that would be satisfactory to you and the bill would be satisfactory? Is not that true?

Mr. GADSDEN. Yes, sir.

Senator FRELINGHUYSEN. Mr. Chairman, Congressman Hutchinson, who introduced the House bill 9521, desires to speak to you on that. He says he can get through in five minutes.

STATEMENT OF HON. ELIJAH C. HUTCHINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY.

Representative HUTCHINSON. Mr. Chairman and members of the committee, it is House bill 9521 that I want to speak about, because I think I know it from A to Z. I have made a great deal of study of it. There are four important things in the bill. The first is the marking, the second is the time, the third is the sanitation, and the fourth is the reports.

As to the first part, there has been some objection here about the 30 days' exemption. I have no objection to that. Our committee spent four months on it, and we thought this was better, because if we give them a month's exemption we then give them 13 months instead of 12. You give them an extension of one month.

Another thing is, it is in the interest of the warehousemen. For instance, goods going into the warehouse unmarked may be carried over, and there is a penalty in this bill; and you will have a lot of warehousemen paying a fine, and also the owners. The object was to mark it when it went in, because that would be more accurate.

Although, as I have said, I have no objection to the 30 days for the purpose of accumulating a car, and so on.

With reference to the goods that go into interstate commerce, it is a very difficult thing to draft a law that would affect goods that go into cold storage; because, my judgment is, the very minute it goes out of interstate commerce it leaves the cold-storage trade and does not have to be marked, and we have no further control over it. I think, therefore, that this bill is drawn very carefully, and the sanitary part is a very important thing. Lots of our cold-storage warehouses are not satisfactory, and it is not good for the public health.

Another thing is the marking. I think the people of the country do not object to paying high prices providing they know that there is a scarcity of food, but when we have millions and millions of pounds of stuff stored in cold storage and they keep it there for the purpose of creating a market it is wrong. Take the State of New Jersey. We claim we have a model law there. We have had millions of pounds of fish there thrown out that has come from other States that we could not tell anything about.

It is important we should have a uniform law. As I have said, our committee has spent a good deal of time on this, and this bill is essentially the same, with possibly two or three exceptions.

I think that section 12 ought to be cut out.

Senator FRELINGHUYSEN. You mean section 12 of your bill?

Representative HUTCHINSON. In this bill here too, yes.

The CHAIRMAN. That applies to drawn poultry?

Representative HUTCHINSON. Yes. It would not be so bad if the poultry were drawn and thoroughly cleaned, but they do not take the time to do it, and the consequence is it goes all through the animal.

The CHAIRMAN. What about fresh fruits and vegetables?

Representative HUTCHINSON. There is not any of that that is in cold storage very long; the main part of it is put on the market.

There was a gentleman before your committee the other day who spoke about the great expense of marking apples. There was testimony before our committee that the marking "cold storage" was an enhancement of the value of the apples; in other words, that the people prefer to buy cold-storage apples.

In reference to the expense involved in the marking of the barrels, they put the name of the fruit on the barrel and with the same stamp they can put on the date just as easily. It will not cost a fraction of a mill more than the original stamp.

That is not the objection. The objection is, in my judgment, that they do not want people to know how many apples they have in the country, and I think it is due the people that they should know just what we have got in this country. As I said a while ago, if they know there is a scarcity they are willing to pay the price. Take, for instance, the cooling room that the gentleman had reference to. They are keeping millions of pounds there until they get the demand, and they do not pretend to cure it until they get the demand.

Now, if we limit the time in cold storage and the owner knows he has got to sell that stuff within 12 months he will make provisions to sell it within 12 months, and we will have a general flow of our products and we will not have these enormous prices. That is the object of the bill. In my judgment it will do more to reduce the cost of living than anything else we can do.

Speaking about the number of States that have laws, there are not over two or three that have any kind of a uniform law. All of them exempt some particular thing that they are interested in.

Senator WADSWORTH. It is not a uniform law as to the product covered, but as to the regulations imposed upon the products that are covered?

Representative HUTCHINSON. Yes. Take your State of New York; they have private cold-storage houses there that do not make a report—thousands of them. They go to work and put it in their own private rooms and there is no report made of it at all.

Senator WADSWORTH. Would you have your law apply to a co-operative cold-storage fruit house?

Representative HUTCHINSON. I have no objection to it.

Senator WADSWORTH. How would you identify the ownership of the apples if you are going to have it apply to fresh fruit?

Representative HUTCHINSON. When any vegetables or fruits or meats go into the cold-storage warehouse, for the purpose of paying for the storage it is marked. The package is designated. They know just how long it is in there, because they pay storage on it.

Senator WADSWORTH. No, Congressman; that is not the way it is done in the fruit regions. The farmers themselves in many instances club together and have their own cold storage, in which they put their apples as they are picked, and then later on in the season they simply grade those apples and put them on the market or put them into further cold storage. They do it on a cooperative basis.

Representative HUTCHINSON. They do not lose their identity, though?

Senator WADSWORTH. The apples themselves do.

Representative HUTCHINSON. Before they are sorted?

Senator WADSWORTH. Not before they are sorted, but after they are sorted the identity of the apple is lost.

Senator CORE. It is just like putting wheat into a bin, is it?

Senator WADSWORTH. Exactly.

Senator FRELINGHUYSEN. If two fellows who are raising winesaps put them into one bin, 40 bushels each, and then they pick them out and barrel them, one fellow has got the apples of the other fellow?

Senator WADSWORTH. Yes.

Senator FRELINGHUYSEN. And therefore, by reason of that, it is impracticable to mark them?

Senator WADSWORTH. Yes; it would impose a fearful burden on them to mark the apples that go into cold storage and keep track of the length of time they are there. Nobody ever holds apples over 12 months. A man would be a perfect idiot to do it, because he would be swamped by the incoming fresh crop. And what is he going to do while that little country cold-storage house is sorting the apples that have come in from many farmers and are sold later by grade and the farmer credited for what that grade brings on the market? You can not tell whether the six apples on one side of the crate have been in there 30 days or not.

Senator FRELINGHUYSEN. Here is what Congressman Hutchinson is trying to do. Of course apples are utilized as a food product to a large extent. Those fellows can hold those apples through January and February for the March market, and those apples will be at a price 20 to 40 per cent higher than if they were distributed in January and February.

Senator WADSWORTH. Yes; and if you distributed them in January and February you would not have any apples in March.

Mr. GADSDEN. May I correct you a little bit, Senator Frelinghuysen? I am also a storer of apples. There are some apples you can hold that length of time and some you can not. Apples are peculiar; there are some varieties that go in early and some out early.

Senator FRELINGHUYSEN. I know that; but you can hold Winesaps and Delicious and a lot of those varieties.

Senator WADSWORTH. Under those circumstances, should you not do so?

Senator FRELINGHUYSEN. Why, no. If the poor people are going to get apples in January and February, which they are denied, you have got to have an equal distribution of them. Those people hold them for the March market—I think that is the month—when only the wealthy can buy apples, and you will find them on the tables of the wealthy.

Senator WADSWORTH. Do you think this bill will cure that if fresh fruits are included?

Senator FRELINGHUYSEN. I do not know whether it will or not. But what Mr. Hutchinson is trying to get at is whether they are hoarding apples, and whether the Government through this regulation can not force apples onto the market which are being held for speculation.

Senator WADSWORTH. I have lived in the heart of one of the greatest fruit areas in the United States all my life, and I have never yet seen apples held for speculation in a sufficient quantity to affect the market price of apples generally. Ordinarily when they are held for speculation beyond that period of safety which comes in the early spring, the man loses his stock. He has got to get rid of them.

Senator FRELINGHUYSEN. Maybe you are right, but that is the motive behind this bill.

Senator GORE. The object of this bill is for the law to decide how long they may be held, instead of letting the individual owner decide?

Senator FRELINGHUYSEN. After 12 months. It does not affect apples so far as that is concerned. After 12 months you can not sell them.

Senator WADSWORTH. No one would buy them after 12 months.

Senator FRELINGHUYSEN. The point is this, Senator. The very minute you ask for exemption on apples then you can go right down the line. The object of this bill, as I understand, is that everything shall be reported.

Senator WADSWORTH. I thought it was to protect public health.

Senator FRELINGHUYSEN. It has many virtues, one of which is the protection of public health.

Senator GORE. If it undertakes to manipulate the law of supply and demand and to force stuff on the market arbitrarily without reference to the supply and the demand, might it not do more harm than good?

Senator FRELINGHUYSEN. It did not in New Jersey, Senator.

Senator WADSWORTH. Does your cold-storage law apply to all fresh fruits?

Representative HUTCHINSON. I think so; I do not know about that. The very minute you allow the cold-storage people to carry a product over into another season you are running the next season down; there is no question about that.

Senator WADSWORTH. No one can possibly object to the 12 months' limitation.

Representative HUTCHINSON. I do not think so.

Senator FRELINGHUYSEN. That is the object; I do not know whether it will work out that way. But I do think this: I think that a lot of these fellows, particularly the fellows who buy the farmers' products—I do not think it is the farmers so much; I think it is the jobbers who are speculating in apples; the middlemen speculate on the market and hold them in cold storage. Now, it may correct that evil, or it may not, but that is one of the objects of the bill, in addition to public health and in addition to an effort to get equal distribution.

Senator WADSWORTH. I have no objection whatsoever to the 12 months' limitation, and I have no objection to its applying to articles which are held in cold storage and which may be sold in such a way as to deceive people and injure people. But with fresh fruits you can not sell them in such a way as to deceive people. Their condition shows for itself right on the fruit. Furthermore, the way the fruit business is operated in the great fruit sections you can not follow through the identity of each fruit.

Senator FRELINGHUYSEN. Have you any testimony on the apple situation, Mr. Chairman?

The CHAIRMAN. Yes; we have. Let me read section 1 of the New Jersey law:

For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of forty-five degrees Fahrenheit in a cold-storage warehouse; "cold-storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of forty-five degrees Fahrenheit in which articles of food are placed or held for thirty days or more; "articles of food" shall mean fresh meat and fresh-meat products, except in process of manufacture, and all fish, game, poultry, eggs, milk and milk products, and edible fats and oils. The terms "article of food" and "articles of food" as used in this act shall be construed to mean and include fresh meat and fresh-meat products, except in process of manufacture, fresh food fish, game, poultry, eggs, milk and milk products, and edible fats and oils.

Mr. KIRK. Mr. Chairman, may I ask a question? I understood the Congressman to say there were only two or three of the States that had laws that were uniform?

Representative HUTCHINSON. Absolutely uniform; yes.

Mr. KIRK. Do you know of any of the State laws that do not include fresh meats and butter, eggs and poultry?

Representative HUTCHINSON. I think almost all of them include them.

Mr. KIRK. They all include them?

Representative HUTCHINSON. Yes.

Mr. KIRK. Another thing: Did you understand the difference between what we call coolers in the packing-house business and freezers?

Representative HUTCHINSON. I understand the cooler is where you kill an animal and put it in there for 24 hours or 48 hours.

Mr. KIRK. It goes further than that Congressman. Our branch houses maintain coolers. They are refrigerated salesrooms, where stuff is not carried more than 30 days.

Representative HUTCHINSON. Then, this law would not affect them at all.

Mr. KIRK. That is what I am getting at. It should not, because that is in the ordinary course of marketing. If we carry them longer

than 30 days there I have no objection at all to having them included as cold-storage products and having them reported.

The CHAIRMAN. I want to ask one question. Mr. Hutchinson, you still insist that we ought to keep fresh fruits and fresh vegetables in the bill?

Representative HUTCHINSON. I think, Senator, we ought to include everything. That is the only way we can get a complete record.

Senator FRELINGHUYSEN. As I understand it, Congressman, you make a point of the sanitary part of your bill, and also the marking?

Representative HUTCHINSON. Yes.

The CHAIRMAN. We are very much obliged to you gentlemen. The committee will now stand adjourned.

(The following statement was subsequently submitted and by order of the chairman is here printed in full, as follows:)

STATEMENT OF JAMES MCGOWAN, JR., ASSISTANT GENERAL MANAGER, JOSEPH CAMPBELL CO., CAMDEN, N. J.

We are packers of canned soups. In our products we use meats, vegetables, poultry, and dairy products, the manufacturing being conducted in an establishment which is under the inspection of the United States Bureau of Animal Industry.

Our manufacturing extends over the entire year, but is seasonable for certain products because of certain crop and economic conditions.

In most of our soups a variety of raw materials is used, the production of which in turn is seasonable or partially so. For example, in vegetable soup we use bones, boned meat, and a large variety of vegetables. Vegetable soup is made from October to July. The bones and meats are procured from meat packers who "cut up" cattle during a period extending from fall up to February. These materials must be placed in cold storage until they can be used. The vegetables, likewise, must be cold stored from the time of cropping until the time of use. Our business can be conducted with economy in no other manner.

As we interpret page 4, lines 18, et seq., this product must be labeled to show "cold storage" and to show the date and place of storage. This is also true of many other soups which contain meats and vegetables and for soups, such as tomato soup, which contain butter.

These soups are prepared on a large scale, the manufacture often exceeding 2,000,000 cans per day. The labels would have to be printed in advance with the information required by this bill, because the product must be labeled as soon as packed in order that it may be shipped to the distributor as soon as possible and to avoid congestion in the factory and to permit manufacture in the most economical manner. On any given day a number of varieties of soup may be manufactured, and in turn in these several varieties several various lots of raw materials may be used. With each change in lot a change in information on the label would be required. The quantity of labels for the product could not be exactly determined in advance, because, for example, defects may be found in a certain lot of material which would preclude its use, or the material may have to be diverted to other uses.

There are other like reasons which, from a manufacturing standpoint, would render it entirely impracticable for us to use labels which require this information thereon, not the least of which would be the excessive expense of having labels printed in this manner, necessitating as it would printing in small quantities and the loss of labels, due to the impossibility of estimating requirements of labels.

The above also applies in more serious degree to the printing of the shipping cases in which the cans are packed, and which then become the original packages in interstate commerce.

It is obvious that the use of cold storage, as applied in our business, is solely for the purpose of manufacturing in the most economic way a product which has a large public demand. It is our belief that the provisions of this bill, as we interpret them, may be applied to our business and will, in effect, increase the price of our product to the consumer because of the increase in the cost of raw materials, the increase in cost of labels and cases, and the increase in cost of manufacturing, labor, and facilities.

We desire that the bill shall be amended by exempting manufactured foods, or in other manner, so that this condition shall be eliminated.

(Thereupon, at 12.25 o'clock p. m., the committee adjourned.)

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